



CITY COUNCIL AGENDA REPORT

MEETING DATE: December 2, 2008

ITEM NUMBER: **IX-1**
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SUBJECT: AMENDMENT OF TITLES 1 AND 2 RELATING TO GENERAL PROVISIONS AND ADMINISTRATION

DATE: NOVEMBER 24, 2008

FROM: CITY ATTORNEY'S OFFICE

PRESENTATION BY: KIMBERLY HALL BARLOW, CITY ATTORNEY

FOR FURTHER INFORMATION CONTACT: KIMBERLY HALL BARLOW, 714-754-5399

RECOMMENDATION:

1. Consider and adopt Resolution Clarifying City Council's intent with respect to contracting for City Attorney Services.
2. Introduce and give first reading to Ordinance Amending Titles 1 and 2 of the Costa Mesa Municipal Code relating to General Provisions and Administration in order to affirm the rights, powers, duties and obligations of the City Attorney.

BACKGROUND:

The City Council elected to eliminate the in-house City Attorneys' Office in 2004, and determined that it would be in the City's best interests to contract out those services to a private law firm offering comprehensive municipal law services, including municipal legal advisement, litigation services and code enforcement prosecution. The City Council appointed the law firm of Jones & Mayer as its City Attorney, with Kimberly Hall Barlow designated as the named City Attorney. The City directed in its contract with the firm of Jones & Mayer that all legal services were to be provided by members of the firm working under the direction and supervision of City Attorney Barlow. Among the duties specifically assigned to the City Attorney under the contract was code enforcement prosecution.

Since November 1, 2004, code enforcement prosecution services have been provided primarily by Danny Peelman, a member of Jones & Mayer, with the knowledge and consent of the City Council, the City Manager and the City Attorney. Because of the unique ethical obligations of a public prosecutor, Mr. Peelman and other attorneys providing city prosecution services are required to independently evaluate whether law and justice would be served by pursuing criminal or quasi-criminal charges against any individual person based on the particular facts and circumstances of the case presented to him or her. Mr. Peelman and others performing prosecutorial services have in fact exercised their obligations independently and without direction or interference from the City Attorney, the City Manager or the City Council.

Nonetheless, a recent court decision, not yet final, calls into question whether Mr. Peelman was properly appointed to perform prosecutorial services for the City and goes further to question the powers and duties of the City Attorney in performing required legal services for the City.

ANALYSIS:

In order to restate and clarify the City's intent and the City's municipal code so that there is no further misapprehension of the rights, duties, obligations and powers of the City Attorney and the City Attorney's office, we have brought forward a proposed resolution with respect to the existing contract for legal services and the power of Jones & Mayer attorneys to perform such services, including code enforcement prosecution. We have also presented a proposed ordinance to restate and make clear that when it determined to contract for City Attorney services, the City did not intend in any way to reduce, impair or otherwise change the powers of the City Attorney, including the power to appoint subordinates and to delegate tasks and responsibilities to those subordinates. The proposed ordinance collects in one place provisions detailing the existing powers, duties and obligations of the City Attorney as set forth in state law, existing ordinances, council policy, practice and contract.

Under California Government Code section 36505, the City is entitled to appoint a City Attorney, which it has done since it was originally incorporated. Under California Government Code sections 37103 and 53060, the City may contract with specially trained experts, firms or corporations for special services and advise in various matters, including legal matters. City prosecutor services are expressly included within those for which a City may contract. The City's contract with Jones and Mayer to provide city attorney and prosecution services was and is explicitly authorized by California law. California law establishes no distinction between attorneys providing services by contract and those who are employed by cities insofar as their rights, duties, obligations and powers are concerned. In fact, both California law and the City's municipal code provide statutory authority for the City Attorney to delegate his or her functions and duties to assistants and deputies. For example, California Government Code section 1190 provides that "assistants, deputies, and other subordinate officers, whose appointments are not otherwise provided for, shall be appointed by the officer or body to whom they are respectively subordinate." Because neither the Government Code nor the Municipal Code provide for any other method of appointment, deputies to the City Attorney would be appointed by the City Attorney. Pursuant to Government Code section 1194, "each deputy possesses the powers and may perform the duties attached by law to the office of his principal." The same powers are expressed in Costa Mesa Municipal Code section 1-9.

ALTERNATIVES CONSIDERED:

The Council could determine not to adopt, or it could alter or amend the proposed resolution.

FISCAL REVIEW:

There should be no fiscal impact from adoption of the Resolution or the Ordinance, as they are merely clarifying and declarative of existing practice and law.

LEGAL REVIEW:

The City Attorney's office has prepared the proposed Resolution and Ordinance. Both the Resolution and Ordinance were reviewed and approved by outside legal counsel Philip Kohn of Rutan & Tucker, who was retained by the City in 2004 to prepare the City Attorney's contract. Mr. Kohn believes that it is an appropriate and prudent approach under the circumstances to adopt the proposed Resolution and Ordinance.

CONCLUSION:

The Council is requested to Adopt the proposed Resolution and to introduce and give first reading to the proposed ordinance.



ALLAN L. ROEDER
City Manager



KIMBERLY HALL BARLOW
City Attorney

DISTRIBUTION: City Manager

ATTACHMENTS: 1 Draft Resolution Clarifying Council Intent
 2 Draft Ordinance
 3 Contract for Legal Services

File Name

Date

Time

RESOLUTION NO. 08-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, CLARIFYING ITS INTENT WITH RESPECT TO LEGAL SERVICES PROVIDED BY CONTRACT CITY ATTORNEY JONES & MAYER.

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the City of Costa Mesa determined in 2004 to contract out its city attorney services and to eliminate its staff of in-house attorneys; and

WHEREAS, the City of Costa Mesa selected the law firm of JONES & MAYER to serve as its City Attorney, designating Kimberly Hall Barlow as the attorney to carry the title of City Attorney, but specifically designating the firm as a whole (and all attorneys in the firm) to handle legal matters for the city, including attendance at council meetings, review of contracts, representing the city in litigation and prosecuting municipal code violations, under the general supervision of Ms. Barlow or such other attorney from the firm who might from time to time be designated by the City Council; and

WHEREAS, it was and remains the intent of the City Council that any and all attorneys employed by the law firm of Jones & Mayer, whether or not designated by any particular title, are authorized and entitled to provide legal services to the City of Costa Mesa, just as if each was specifically designated as the City Attorney and that City Attorney Barlow may delegate any and all legal services to be performed by the City Attorney to an employee or independent contractor of the firm to provide such services to the City without further action by the City Council; and

WHEREAS, any attorney from Jones & Mayer providing municipal code prosecution services shall be considered a Deputy City Attorney and shall be required to comply with the City's conflict of interest code; and

WHEREAS, the City Council intended to and did approve the designation of Danny L. Peelman as the Jones & Mayer employee primarily responsible for rendering city prosecutor services. Since November 1, 2004, Mr. Peelman has provided, with the knowledge and consent of the City Council and the City Manager, prosecution services under a valid appointment and as authorized by law in the name of the People of the State of California; and

WHEREAS, any attorney exercising prosecutorial functions on behalf of the City of Costa Mesa has independently exercised those functions and been required to meet the ethical obligations of a public prosecutor as required by California law, and will continue to do so in the future exercise of such functions;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Costa Mesa, does hereby declares as follows:

1. The contract between the City of Costa Mesa and Jones & Mayer effective November 1, 2004 specifically provides that Jones & Mayer is to provide all legal services to the City of Costa Mesa, including municipal code prosecutorial services.
2. The prosecutorial function of the City Attorney has been properly and legally delegated to Danny L. Peelman and other attorneys employed by or acting on behalf of Jones & Mayer effective as of November 1, 2004.
3. Any and all attorneys employed by or contracting with Jones & Mayer, other than the designated City Attorney and Assistant City Attorney, performing legal services or exercising prosecutorial functions on behalf of the City of Costa Mesa shall be considered a deputy city attorney and shall be required to comply with the City's conflicts of interest code.
4. Any and all attorneys employed by or contracting with Jones & Mayer exercising prosecutorial functions on behalf of the City of Costa Mesa shall independently exercise their prosecutorial duties in compliance with the ethical standards and other requirements imposed on public prosecutors under California and federal law.

PASSED AND ADOPTED this 2nd day of December, 2008.

Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

Julie Folcik, City Clerk

Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing is the original of Resolution No. 08-_____ and was duly passed and adopted by the City Council of the City of Costa Mesa at a regular meeting held on the 2nd day of December, 2008, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 2nd day of December, 2008.

JULIE FOLCIK, CITY CLERK

(SEAL)

ORDINANCE NO. 08-__

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF COSTA MESA AMENDING TITLE 1 AND
TITLE 2 OF THE COSTA MESA MUNICIPAL CODE
RELATING TO GENERAL PROVISIONS AND
ADMINISTRATION

WHEREAS, the City of Costa Mesa determined in 2004 to contract out its city attorney services and to eliminate its staff of in-house attorneys; and

WHEREAS, the City Council in taking the action to contract out for city attorney services did not intend to change the powers or duties of its City Attorney or the city attorney's office; and

WHEREAS, a recent court ruling, though not yet final, appears to suggest that the City's contract City Attorney has different or lesser powers than those exercised by the City's previous in-house City Attorney; and

WHEREAS, the City Council's determination to contract out for city attorney services was not intended to or did not alter in any way the powers of the City Attorney or the city attorney's office; and

WHEREAS, the City Council nevertheless believes it is prudent and appropriate to amend the Costa Mesa Municipal Code to restate and clarify the existing and continuing rights, duties and obligations of the City Attorney and the city attorney's office; and

WHEREAS, the City Council expressly declares that these restatements and clarifications do not represent any change in city law but are declaratory of existing law;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Title 1 of the Costa Mesa Municipal Code. Section 1-9 of Chapter I, is hereby repealed and replaced in its entirety with the following:

Sec. 1-9. Exercise of power or duty by assistant or deputy.

Whenever a power is granted to or a duty imposed upon a city officer by this Code, any other ordinance, resolution, policy or contract of the city, and irrespective of whether such city officer serves as an employee of the city or is appointed by virtue of a professional services contract, the powers and duties of such officer may be exercised or the duty performed by an assistant or a deputy of the officer or by a person authorized pursuant to law by the officer, whether such assistant or deputy or person be an employee of the city or be retained by

virtue of a professional services contract, unless this Code or the ordinance, resolution, policy or contract expressly provides otherwise.

Section 2. Title 2 of the Costa Mesa Municipal Code, Section 2-3 of Chapter I, is hereby repealed and replaced in its entirety with the following:

Sec. 2-3. Appointment of city treasurer and city attorney; terms of office; removal.

The city council shall appoint a city treasurer and a city attorney to serve and hold office at and during the pleasure of the city council. Removal of these city officers from their respective posts shall be done in the same manner as provided for in section 2-224.5 of this Code. Where the city attorney is appointed pursuant to a contract for professional services, removal of the city attorney shall be as set forth in such contract.

Section 3. Title 2 of the Costa Mesa Municipal Code is hereby amended by adding Chapter IV ½, Article 1, Sections 2-140 through 2-145, to read as follows:

Chapter IV ½. CITY ATTORNEY

Article 1. Generally

Sec. 2-140 – Appointment of City Attorney.

Pursuant to the provisions of California Government Code section 36505, the city attorney appointed under Section 2-3 of this Code shall perform the functions set out in California Government Code section 41801, *et seq.* The city attorney may be an individual at-will employee or city attorney services may be performed by a law firm retained by contract at the pleasure of the city council. If city attorney services are performed by a law firm, then the contract shall specify the specific attorney(s) who shall be designated by the title City Attorney and Assistant City Attorney. All other attorney employees or contractors of the law firm employed to perform city attorney services shall be considered to be deputies of the designated city attorney.

Sec. 2-141 – Compensation.

The city attorney shall receive such compensation as the city council shall from time to time determine and fix by resolution or contract, which compensation shall be a proper charge against funds of the city. The city council shall designate such funds.

Article 2. Powers and Duties

Sec. 2-142 – Duties.

The city attorney shall advise city officials in all legal matters pertaining to city business including conflicts; frame all ordinances and resolutions required by the legislative body or under his or her own initiative; represent the city's interests in legal actions brought against the city or to select and oversee other legal counsel retained to do so; perform such other legal services as are required by this Code or by the city council from time to time; prosecute municipal code violations; prosecute misdemeanors committed within the city arising from violation of state law with the consent of the district attorney; jointly with the city manager, initiate and supervise retention of other legal counsel to provide specialized services to the City; and cooperate with and assist the city manager in administering the affairs of the city most efficiently, economically and harmoniously so far as may be consistent with his or her duties as prescribed by law and contract. If the city attorney is retained by contract, the duties, rights and obligations of the city attorney shall be as set forth in this Code and in the professional services contract.

Sec. 2-143 -- Appointment and Delegation.

If the city attorney is an individual at-will employee, he or she shall be considered the appointing authority for such subordinate officers or employees as may be authorized by council action, subject to the approval of the city manager. If the city attorney is an individual or law firm which is an independent contractor of the City, all attorney employees or contractors of the individual law firm employed to perform city attorney services shall be considered to be deputies of the individual designated as the city attorney. The city attorney may delegate any of the powers and duties conferred upon him or her under this Code to any other officer or employee of the city or any other employee or contractor of the city attorney pursuant to a contract for professional services, or may recommend that such powers and duties be performed under contract.

Sec. 2-144 -- Attendance at Meetings.

It shall be the duty of the city attorney to attend all meetings of the city council and such of its committees as he or she may deem necessary, unless excused therefrom by the city council.

Sec. 2-145 – Reports and recommendations.

It shall be the duty of the city attorney and he or she shall have the power to make reports and recommendations as may be desirable or as requested by the city council.

Secs. 2-146 -- 2-151. Reserved.

Section 4. These provisions are declaratory of existing law in the City of Costa Mesa with respect to the rights, powers and duties of the City Attorney and the City Attorney's office.

Section 5. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 6. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 7. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

PASSED AND ADOPTED this 2nd day of December, 2008.

Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

Julie Folcik, City Clerk

Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 08-____ was introduced and considered section by section at a regular meeting of said City Council held on the 2nd day of December, 2008, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ____ day of _____, 2008, by the following roll call vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this ____ day of _____, 2009.

JULIE FOLCIK, CITY CLERK

(SEAL)

I hereby certify that the above and foregoing is the original of Ordinance No. 08-____ duly passed and adopted by the Costa Mesa City Council at the regular meeting held _____, 2008, and that summaries of the Ordinance were published in the Newport Beach-Costa Mesa Daily Pilot on _____, 2008 and _____, 2009.

JULIE FOLCIK, CITY CLERK

RETAINER AGREEMENT FOR CITY ATTORNEY SERVICES

This Retainer Agreement for City Attorney Services ("Agreement") is made and entered into by and between the LAW OFFICES OF JONES & MAYER ("Jones & Mayer") and the CITY OF COSTA MESA (the "City"), a municipal corporation of the State of California.

RECITALS

A. Jones & Mayer is a firm in the general practice of law with extensive municipal experience, and is fully able to carry out the duties described in this Agreement.

B. The City desires to contract with Jones & Mayer to provide contract legal services to the City.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth in this Agreement, Jones & Mayer and the City agree as follows:

1. APPOINTMENT OF CONTRACT CITY ATTORNEY

A. Kimberly Hall Barlow ("Barlow") of Jones & Mayer, is hereby designated and appointed as Contract City Attorney of the City and shall serve and be compensated as provided by this Agreement. As the Contract City Attorney, Barlow shall process, coordinate, and direct, as necessary, all legal services provided under this Agreement in order to maximize the timeliness and usefulness of the delivery of such services. Barlow shall attend all City Council meetings and other meetings, as required, and be available at all reasonable times to the Mayor and City Council, the City Manager, and persons designated by the City Manager, in relationship to all legal services to be furnished by Jones & Mayer under this Agreement. Barlow shall also direct and coordinate all internal activities so that all services provided by Jones & Mayer under this Agreement to the City shall be fully competent, professional, consistent, timely, and in accordance with the standards prevalent in the industry. It is expressly understood that the experience, knowledge, capability, and reputation of Barlow are a substantial inducement for the City to enter into this Agreement. Barlow shall be responsible during the term of this Agreement for directing all activities of Jones & Mayer on behalf of the City and devoting such time as necessary to personally supervise such services. The

primary assignment of Barlow shall not be changed by Jones & Mayer without the express approval of the City.

B. Harold W. Potter, also of Jones & Mayer, is designated and appointed as Contract Assistant City Attorney and shall serve in Barlow's absence.

C. Barlow and any other attorneys of Jones & Mayer assigned to perform approved City business shall, at all times while this Agreement is in effect and at their sole cost and expense, be fully qualified and licensed to practice law in the State of California and before all appropriate federal courts and other bodies and tribunals.

D. The term of this Agreement shall commence on November 1, 2004 and shall continue thereafter unless and until it is terminated or amended.

2. SCOPE OF WORK

A. Jones & Mayer agrees to perform all necessary legal services as Contract City Attorney, and shall:

1. Attend all regularly scheduled and special City Council meetings and City Council study sessions.

2. Provide legal services on-site during office hours at City Hall at least four (4) hours per week or as otherwise mutually agreed. These hours of on-site service will be at regularly scheduled times made known to all members of the City Council and to all department heads so as to facilitate informal, direct access to legal counsel as necessary.

3. Attend other meetings at City Hall as required by the City Council or the City Manager.

4. Advise the City Council; appointed Commissions, Committees, and Boards; City staff; and other City officials on all legal matters pertaining to City business.

5. Prepare, review, and approve as to form, contracts, agreements, resolutions, ordinances, and all other standard City documents.

6. Prepare such written and oral legal opinions as shall, from time to time, be requested by the City.

7. Perform such other routine legal services as are required, from time to time, by the City Council or the City Manager.

8. Provide in-house training to City staff on issues pertaining to civil liability, personnel and labor, and other issues as, from time to time, are identified by and requested by the City Council or the City Manager.

9. Review and approve as to form and content all proposed adverse personnel actions as, from time to time, are requested by City staff and directed by the City Manager.

10. Perform all work related to advising staff on, and prosecuting, all violations of City's municipal code.

11. Represent the City and the City's officials, officers, and employees in litigation and administrative proceedings as directed by the City Council or the City Manager.

12. Make recommendations concerning the selection of outside legal counsel on appropriate matters and supervise such outside legal counsel handling transactional or litigation matters on behalf of the City.

B. The City specifically reserves the right to retain, at its sole option, other legal counsel for litigation and other specialized legal matters including, but not limited to, the activities of the Redevelopment Agency, cable television, solid and hazardous waste, and workers' compensation. This reservation of rights does not preclude the City or the Redevelopment Agency from assigning these matters to Jones & Mayer as part of the scope of duties under this Section 2.

C. It is further understood and agreed by Jones & Mayer and the City that there will be an initial, and as yet undetermined, period of time at the outset of this relationship during which Jones & Mayer will be overseeing the work of existing in-house City Attorney staff until such time as all such existing staff are phased out of City service. Jones & Mayer shall establish and maintain necessary liaison and oversight of all pending matters and projects currently being handled by existing staff, either by supervising such work to successful and timely completion or by reassigning such work as deemed appropriate by Jones & Mayer or as directed by the City Manager.

3. COMPENSATION

Jones and Mayer shall be compensated under the terms of this Agreement as follows:

A. Basic Services

All legal services provided by Jones & Mayer shall be billed to the City at the rate of \$160 per hour. Paralegal services shall be billed at the rate of \$100 per hour. All costs and expenses, except for those as set forth in Section 3.B below shall be deemed included in the foregoing hourly billing rates.

Fees associated with litigation shall be billed separately and at the rate of \$160 per hour for attorney time and \$100 per hour for paralegal time.

The foregoing billing rates shall be adjusted annually (effective as of November 1 of each year commencing in 2006) to reflect the lesser of: (1) any increase in the cost of living based on the Consumer Price Index increase for the prior year utilizing the standard as established by the Bureau of Labor Statistics of the U.S. Department of Labor for all urban consumers in the Los Angeles - Anaheim - Riverside area, or another mutually agreed upon index based on comparable data should the Consumer Price Index established by the Bureau of Labor Statistics be unavailable; or (2) the percentage increase in actual labor costs of Jones & Mayer for the prior year.

B. Litigation Expenses

Jones & Mayer shall be reimbursed for direct out-of-pocket expenses actually and necessarily incurred in the course of providing legal services under this Agreement in preparation for and maintaining the prosecution or defense of litigation, including without limitation: court costs, jury fees, service costs, witness fees, deposition costs, reporters' fees, title reports, photographs, diagrams, maps, and similar expenses.

C. Monthly Statements

Jones & Mayer shall submit itemized statements of all payments due under this Agreement on a monthly basis to the City Manager. All work performed by Jones & Mayer shall be billed in increments of tenths of an hour. The statement shall be in a form approved by the City, and shall set forth a description of all work performed, the hours worked, the identity of each person performing the work, the rate charged, and any litigation costs or expenses eligible for reimbursement.

D. Payment

All hours shall be billed by the 15th day of each month following the close of the month for which hours are being billed. Payment for hours shall be due and payable after review and approval by the City Manager.

4. PROHIBITION AGAINST SUBCONTRACTING, DELEGATING OR ASSIGNMENT

Jones & Mayer shall not contract with or delegate to any individual or other entity to perform on the City's behalf, in whole or in part, any of the services required under this Agreement without the prior express approval of the City. In addition, neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior express approval of the City.

5. CONFLICT OF INTEREST

Jones & Mayer shall at all times avoid conflicts of interest in the performance of this Agreement. In the event that a conflict arises, Jones & Mayer shall immediately notify City. Within thirty (30) days following execution of this Agreement, Jones & Mayer shall file a conflict of interest disclosure statement setting forth any information related to potential conflicts of interest to the extent such disclosure is required by law.

6. INDEPENDENT CONTRACTOR

Jones & Mayer shall perform all services required under this Agreement as an independent contractor of the City, and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Jones & Mayer shall not at any time or in any manner represent that it or any of its employees or agents are City employees.

7. PERFORMANCE REVIEW

The City and Jones & Mayer agree that as soon after the sixth month following the effective date of this Agreement as can be conveniently scheduled, the City shall formally review the performance of services by Jones & Mayer under this Agreement. The form and content of such evaluation shall be as determined by the parties. The City and Jones & Mayer agree that subsequent performance reviews may be conducted from time-to-time upon the request of either party.

8. DISPUTE RESOLUTION

If any dispute or disagreement arises between the City and Jones & Mayer as to any matter relating to this Agreement, including but not limited to the scope of services, the performance of the respective responsibilities of the City and Jones & Mayer, the quality of the services rendered, and the billing of such services, the City and Jones & Mayer agree to confer and attempt to resolve the matter informally. If the parties cannot agree, they agree that they will refer the dispute or resolution to mediation to the fullest extent permitted by law. The parties are aware that mediation is a voluntary process and pledge to cooperate fully and fairly with the mediator in an attempt to reach a mutually satisfactory compromise of any dispute or disagreement. The mediator shall be chosen by mutual agreement of the parties, and mediation shall commence within thirty (30) days of either party's written request to the other for mediation. Any agreement reached by the mediation shall be reduced to writing, be signed by the parties, and be binding on them. This provision for mediation is an effort to protect, preserve, and respect the requisites of a productive attorney-client relationship, but shall be without prejudice to either party pursuing its other lawful remedies.

9. INSURANCE AND INDEMNIFICATION

A. Insurance

Jones & Mayer shall procure and maintain, at its cost, general liability, automobile, worker's compensation, and errors and omissions/professional liability insurance coverage in the amount of not less than \$1,000,000 per occurrence. Such insurance shall be kept in effect during the term of this Agreement and shall not be canceled without thirty (30) days' advance written notice of proposed cancellation to the City. The insurance policy shall contain a severability of interest clause providing that the coverage shall be primary for losses arising out of Jones & Mayer's performance under this Agreement, and neither the City nor its insurers shall be required to contribute to any such losses. Jones & Mayer shall provide certificates evidencing such insurance as may be requested by the City.

B. Indemnification

Jones & Mayer shall defend, indemnify, and hold harmless the City, and its officers and employees, from and against any and all actions, suits, proceedings, claims, demands, losses, costs and expenses, including legal costs and attorneys' fees, for injury to person(s) or damages to property (including property owned by the City), and for errors and omissions committed by Jones & Mayer, its officers, employees, and agents, arising out of or relating to Jones & Mayer's performance under this Agreement, except to the extent that such injury, damage, error(s) or omission(s) may be caused by City's own negligence or that of its officers or employees.

10. RECORDS AND REPORTS

A. Records

Jones & Mayer shall keep such books and records as shall be necessary to perform the services required by this Agreement and to enable the City to evaluate the performance of the required services. The City shall have full and free access to such books and records that deal specifically with the services performed by Jones & Mayer for City at all reasonable times, including the right to inspect, copy, audit, and make summaries and transcripts from such records.

B. Ownership of Documents

All reports, records, documents, and other materials prepared by Jones & Mayer, its employees and agents in the performance of this Agreement shall be the property of the City and shall be delivered to the City upon request by the City or upon termination of this Agreement. Jones & Mayer shall have no claim for further or additional compensation as a result of the exercise by the City of its full rights of ownership of the documents and material hereunder. Jones & Mayer may retain copies of such documents for its own use.

C. Release of Documents

No report, record, document, or other material prepared by Jones & Mayer in the performance of services under this Agreement shall be released publicly without prior written approval of the City, except as may be required by law.

11. NONDISCRIMINATION

Jones & Mayer pledges there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry in the performance of services under this Agreement.

12. TERMINATION

A. Termination By City

Jones & Mayer shall at all times serve under the terms of this Agreement at the pleasure of the City Council, and the City Council hereby reserves the right to terminate this Agreement at will, with or without cause, by providing written notice to Jones & Mayer. Upon receipt of any notice of termination, Jones & Mayer shall cease all services under this Agreement except as may be specifically approved by the City. At that time, all further obligations of the City to pay Jones & Mayer for services rendered under this Agreement shall thereupon cease, except as set forth in Section 12.C below; provided, however, that the City shall be obliged to pay for all services, costs, and expenditures lawfully incurred by Jones & Mayer prior to the effective date of such termination, or subsequent to the date of termination at the direction of City.

B. Termination By Jones & Mayer

Jones & Mayer reserves the right to terminate this Agreement by giving ninety (90) days' advance written notice to City.

C. Mutual Obligations Upon Termination By Either Party

In the event of termination of this Agreement by either party, Jones & Mayer shall cooperate with the City in transferring the files and assignments to the City Clerk or other person designated by City pending the hiring of another City Attorney. Jones & Mayer shall be compensated at the hourly rates set forth in Section 3.A of this Agreement should Jones & Mayer be called upon to perform any services after the effective date of termination, including the transfer of files and assignments.

13. NOTICES

Notices regarding this Agreement shall be given in writing to the parties at the following addresses:

CITY: CITY OF COSTA MESA
Attention: City Manager
77 Fair Drive
Costa Mesa, California 92626-6520

ATTORNEY: JONES & MAYER
Attention: Kimberly Hall Barlow
3777 N. Harbor Blvd.
Fullerton, CA 92835

14. AMENDMENT OF AGREEMENT

This Agreement contains all of the agreements of Jones & Mayer and the City. This Agreement may be amended at any time by mutual consent of the parties by an instrument in writing.

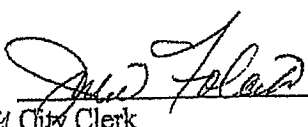
IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement in duplicate the 18th day of October, 2004.

CITY OF COSTA MESA
A Municipal Corporation of the
State of California

By: 

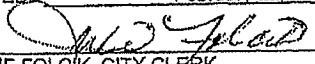
Allan L. Roeder
City Manager

ATTEST:


Deputy City Clerk

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE
AND CORRECT COPY OF THE ORIGINAL ON FILE IN THE
OFFICE OF THE CITY CLERK OF THE CITY OF COSTA MESA.

DATED: February 22, 2008


JULIE FOLCIK, CITY CLERK

LAW OFFICES OF JONES & MAYER

By: 

Richard D. Jones, Owner

By: 

Kimberly Hall Barlow